

matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes an RNAV route to enhance

the safe and efficient flow of traffic in the east-central United States.

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a, 311b. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008 and effective October 31, 2008, is amended as follows:

*Paragraph 2006 United States Area Navigation Routes.*

\* \* \* \* \*

**Q-42 IRK MO to ELIOT, PA [New]**

IRK .....	VORTAC .....	(Lat. 40°08'06" N., long. 92°35'30" W.)
STRUK .....	WP .....	(Lat. 40°14'04" N., long. 90°18'22" W.)
DNV .....	VORTAC .....	(Lat. 40°17'38" N., long. 87°33'26" W.)
MIE .....	VOR/DME .....	(Lat. 40°14'14" N., long. 85°23'39" W.)
HIDON .....	WP .....	(Lat. 40°10'00" N., long. 81°37'27" W.)
BUBAA .....	WP .....	(Lat. 40°10'27" N., long. 80°58'17" W.)
PSYKO .....	WP .....	(Lat. 40°08'37" N., long. 79°09'13" W.)
BRNAN .....	WP .....	(Lat. 40°08'07" N., long. 77°50'07" W.)
MAALS .....	WP .....	(Lat. 40°19'16" N., long. 76°16'08" W.)
SUZIE .....	WP .....	(Lat. 40°27'12" N., long. 75°58'22" W.)
ETX .....	VOR/DME .....	(Lat. 40°34'52" N., long. 75°41'02" W.)
ELIOT .....	WP .....	(Lat. 40°49'07" N., long. 75°07'48" W.)

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Issued in Washington, DC, on January 12, 2009.

**Edith V. Parish,**

*Manager, Airspace & Rules Group.*

[FR Doc. E9-1112 Filed 1-16-09; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 121**

[Docket No. FAA-2009-0022; Notice No. 09-01]

**RIN 2120-AJ30**

**Crewmember Requirements When Passengers Are Onboard**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** Currently, during passenger boarding and deplaning, all flight attendants are required to be on board

the airplane. This rulemaking would allow one required flight attendant to deplane during passenger boarding, and conduct safety-related duties, as long as certain conditions are met. In addition, this rulemaking would allow a reduction of flight attendants remaining on board the airplane during passenger deplaning, as long as certain conditions are met. The FAA has determined that these revisions to current regulations can be made as a result of recent safety enhancements to airplane equipment and procedures. These changes have mitigated the risks to passengers during ground operations that previously required all flight attendants on board the airplane during passenger boarding and deplaning.

**DATES:** Send your comments on or before April 21, 2009.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2009-0022 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow

the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

*Privacy:* We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets,

including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

**Docket:** To read background documents or comments received, go to <http://www.regulations.gov> at any time and follow the online instructions for accessing the docket. Or, go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning this proposed rule contact Jodi L. Baker, Air Transportation Division/Air Carrier Operations Branch, AFS-220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8166; facsimile (202) 267-5229, e-mail [Jodi.L.Baker@faa.gov](mailto:Jodi.L.Baker@faa.gov).

For legal questions concerning this proposed rule contact Paul Greer, Operations Law Branch, AGC-220; telephone (202) 267-3073, e-mail [Paul.Greer@faa.gov](mailto:Paul.Greer@faa.gov).

**SUPPLEMENTARY INFORMATION:** Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. Also, we discuss how you can get a copy of this proposal and related rulemaking documents.

#### Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator, including the authority to issue, rescind, and revise regulations. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Chapter 447—Safety Regulation. Under section 44701(a)(5), the FAA is charged with promoting safe flight of civil aircraft by, among other things, prescribing regulations the FAA finds necessary for safety in air commerce.

#### Background

##### Statement of the Problem

The FAA has decided to review its current regulation regarding flight

attendant requirements during passenger boarding and deplaning in light of safety enhancements to airplane equipment and procedures, and changes in airplane security procedures and requirements. These changes have mitigated the risks to passengers during ground operations that previously required all flight attendants be on board the airplane during passenger boarding and deplaning.

Current rules prohibit a required flight attendant from deplaning an airplane for any reason during passenger boarding and deplaning, even to conduct safety-related duties. This prohibition has unintentional consequences that may adversely affect conditions inside the passenger cabin. This proposed rule would allow air carriers to permit one required flight attendant to deplane during passenger boarding and one or more required flight attendants to deplane during passenger deplaning, subject to certain conditions and limitations.

##### History

This issue has been addressed numerous times over the last two decades and has been the subject of guidance documents, legal interpretations and petitions for exemption.

In 1982, the FAA amended 14 CFR 121.391 and inserted § 121.391(e) to allow a reduction in the number of required flight attendants during stops where passengers remain on board (also called "intermediate stops") (47 FR 56460; December 16, 1982). Section 121.391(e) was recodified as § 121.393(b) in 1995 (60 FR 65832; December 20, 1995).

On May 14, 1985, John Cassidy, Assistant Chief Counsel for the Regulations and Enforcement Division of the FAA, issued a written interpretation to William Brennan, Manager of the Flight Standards Service, Air Transportation Division, stating that "during the deplaning and boarding phase at an intermediate stop, all of the flight attendants required by 14 CFR 121.391(a) must be on board the aircraft." A copy of this document has been placed in the docket for this rulemaking. This rulemaking is intended to codify a change to this interpretation.

On August 8, 1986, the Director of the Flight Standards Service issued Action Notice A8430.5, FAR 121.391(a) and (e); Flight Attendants, stating "at intermediate stops where passengers remain on board the aircraft, at least the number of persons specified in § 121.391(e) must be aboard the aircraft. This includes that period of time during

which passengers are deplaning or boarding." This Action Notice appeared to permit a reduction of required flight attendant crewmembers during boarding and deplaning at intermediate stops, possibly in conflict with the legal interpretation of 1985. Although currently expired, a copy of this document has also been placed in the docket for this rulemaking.

On April 5, 1989, the FAA issued an NPRM, "Flight Attendant Requirements" (54 FR 15134; April 14, 1989) proposing to allow a reduced number of flight attendants aboard passenger-carrying airplanes at all stops, during passenger boarding and deplaning, subject to certain conditions and limitations. The NPRM was withdrawn in 1996 (61 FR 29000; June 6, 1996).

In 2003, the Air Transport Association (ATA) petitioned for rulemaking to amend § 121.391 and permit flight attendants to use a phone on the passenger loading bridge during boarding, deplaning and stops where passengers remain on board (68 FR 61161; October 27, 2003). The ATA subsequently withdrew the petition on December 12, 2003, noting it cited an incorrect regulation (Regulatory Docket No. FAA-2003-14594). The ATA did not re-petition.

On May 8, 2001, the FAA's Assistant Chief Counsel for Regulations affirmed the 1985 legal interpretation that all flight attendants required by § 121.391 needed to be on board the aircraft during passenger boarding and deplaning in a memo to the Manager of the Air Transportation Division. The Air Transportation Division subsequently issued guidance in accordance with the 2001 legal interpretation via Flight Standards Information Bulletin for Air Transportation, FSAT 01-03, Number of Flight Attendants Required at Stops Where Passengers Remain Onboard, 14 CFR 121.391 and 121.393. A copy of this document has also been placed in the docket for this rulemaking. The information contained in this FSAT is currently found in FAA Order 8900.1, Flight Standards Information Management System (FSIMS) Volume 3, Chapter 33 Cabin Safety and Flight Attendant Management, section 4 Flight Attendant Requirements (<http://fsims.faa.gov/>).

In 2006, Southwest Airlines petitioned for an exemption to substitute a pilot for one required flight attendant during boarding at an intermediate stop and to reduce the number of required flight attendants on board during the deplaning of passengers at an intermediate stop. The FAA granted this exemption in 2007

(Exemption No. 9382, Regulatory Docket No. FAA-2006-25466). Three additional air carriers have been issued similar grants of exemption since the issuance of the original grant.

#### *Current Requirements*

During any passenger boarding and deplaning, the full complement of flight attendants required by § 121.391(a) must be on board the airplane at all times (See Memo from John Cassady to William Brennan, dated May 14, 1985). However § 121.393 permits a reduction of the number of required flight attendants when passengers are on board the airplane with the engines shut down and at least one floor level exit is open to provide for the deplaning of passengers. The formula for determining the reduction of flight attendants is: Half the number of flight attendants required by § 121.391(a), rounded down to the next lower number in the case of a fraction, but never fewer than one.

#### **General Discussion of the Proposal**

During passenger boarding and deplaning, it may be in the interest of the traveling public for a flight attendant to conduct safety-related duties outside the airplane cabin. However, current regulations prohibit a flight attendant from performing these duties if the flight attendant is one of the flight attendants required by § 121.391(a).

As previously noted, the number of flight attendants required during passenger boarding and deplaning has been discussed numerous times since 1985. Although the FAA consistently upheld the requirement that all flight attendants required by § 121.391(a) stay on board the airplane during boarding and deplaning, changes to regulations since 1985 have reduced the hazards to passengers during these phases of operation. These changes have reduced risks to passengers by improving firefighting equipment, increasing the time available to evacuate an airplane and improving accessibility to exits. Examples include:

- Requiring lavatory smoke detectors, automatic lavatory waste receptacle fire extinguishers and Halon 1211 extinguishers;
- Improving cabin interior flammability standards to enhance survivability by increasing the time before flashover occurs;
- Improving thermal insulation standards to reduce the risk of fire in inaccessible parts of the airplane cabin and increase the time available for a passenger evacuation; and
- Improving passenger access to Type III (typically overwing) emergency exits.

In addition to the above certification regulation changes, the FAA has revised operational regulations since 1985, which has also reduced the risks to passengers during boarding and deplaning. First, prior to 1987, air carriers were not required to screen passengers for excess or oversized carry-on baggage prior to boarding the aircraft. Current carry-on baggage regulations require this action, which has reduced flight attendant workload in the handling of carry-on baggage during passenger boarding. Flight attendants no longer have to stow an unlimited amount of baggage carried on the airplane by passengers. Second, § 121.585, promulgated in 1990, requires an air carrier to assign exit seats to passengers after considering a list of exit seat selection criteria and the passenger's ability to perform exit seat functions. Because the majority of passengers have been screened to meet exit seat criteria, these considerations lead to exit seat passengers being more likely to initiate "self-help" in the event of an emergency during passenger boarding. Third, the changes to FAA operational regulations have been complemented since 2001 by improved Transportation Security Administration regulations, which have reduced the risk of a security-related threat during passenger boarding or deplaning even further.

All of these changes mitigate the risks to which passengers are exposed during boarding and deplaning. As a result, the FAA now proposes to permit a reduced required flight attendant crew during boarding and deplaning.

#### *Limitations Applicable to Passenger Boarding*

The FAA believes it appropriate to permit one required flight attendant to conduct safety-related duties either in the passenger loading bridge connected to the airplane; or in another nearby location, such as the bottom of the boarding stairs. To maintain the current level of safety, however, the certificate holder would have to comply with the following restrictions:

- The flight attendant deplaning the airplane must remain within 30 feet of the passenger entry door;
- The flight attendant deplaning the airplane must be conducting safety-related duties related to the flight being boarded. The flight attendant may not conduct non-safety-related duties such as personal business; and
- The airplane must be of a type that requires two or more flight attendants in accordance with § 121.391(a). A required flight attendant may not leave an airplane with a passenger seating

capacity of less than 50, because one flight attendant must remain on the airplane at all times.

Typically, during passenger boarding, the airplane cabin starts empty and becomes increasingly more populated by arriving passengers. The increased number of passengers leads to an increased number of safety duties inside the airplane cabin. Examples include: Scanning passenger carry-on baggage to ensure compliance with both § 121.585 and the air carrier's approved carry-on baggage program, and verifying compliance with the approved exit seat program. The FAA believes permitting only one flight attendant to deplane during boarding and limiting the amount of time he or she is absent from the airplane cabin (by limiting the type of duties he or she may perform) ensures the remaining flight attendant(s) are able to effectively manage safety duties inside the airplane. It may be necessary for the certificate holder to revise other approved programs, such as its carry-on baggage program or exit seat program, to ensure all required duties are accomplished by the remaining flight attendant(s). Also, if the airplane requires only one flight attendant in accordance with § 121.391(a), the FAA is not permitting that flight attendant to deplane. This ensures no passengers are left unattended on board the airplane.

When the ATA petitioned for rulemaking in 2003, it proposed that a flight attendant could use the telephone installed on the passenger loading bridge to contact and coordinate with other airline personnel, or local law enforcement, to assist with Federal regulation compliance and to identify security issues or medical emergencies. The FAA agrees that a flight attendant be permitted to use the telephone installed on the passenger loading bridge to perform these functions, but is also proposing to permit a flight attendant to deplane during boarding to conduct other safety-related duties, provided he or she remains within 30 feet of the airplane's passenger entry door. This would allow a flight attendant to use the telephone installed on the passenger loading bridge and to conduct other duties, such as removing excess or oversized carry-on baggage from the airplane and placing it on the passenger loading bridge or adjacent to the bottom of the boarding stairs. It would also permit a flight attendant to coordinate with other airline personnel in cases where a telephone is not installed on the passenger loading bridge or a passenger loading bridge is not used for boarding. A flight attendant deplaning during passenger boarding should not be carrying passenger carry-

on bags to the cargo hold for stowage or re-entering the passenger terminal to coordinate with other employees. Also, by requiring a flight attendant to remain within 30 feet of the door being used for passenger boarding, the flight attendant is still quickly available to assist passengers in the event of an emergency in the cabin. The FAA specifically requests comments about the adequacy of the proposed 30 foot limitation.

Finally, a flight attendant who deplanes during boarding is limited to performing only safety-related duties related to the flight being boarded. Existing regulations already restrict a flight attendant to performing only safety-related duties during airplane movement on the surface. A flight attendant who deplanes during boarding would not be permitted to conduct non-safety-related duties, such as collecting passenger tickets or calling for catering. A flight attendant who deplanes during boarding also may not conduct personal business, such as submitting bids related to crew scheduling, making layover arrangements, or conducting family business. Allowing a flight attendant to conduct business not related to the safety of the flight would not be in the public interest and would not be permitted.

#### *Substituting a Qualified Crewmember for a Required Flight Attendant During Passenger Boarding*

Only two types of qualified crewmembers are used in air carrier operations: flightcrew members or flight attendants. This proposed rule would allow a flightcrew member to substitute for one required flight attendant during boarding. Nothing in the proposed rule, or the current rule, prevents an air carrier from substituting a qualified flight attendant for another qualified flight attendant; however, if the air carrier chooses to substitute another qualified crewmember, such as a pilot or flight engineer, the certificate holder must meet certain conditions.

The proposed rule addresses two possible scenarios during boarding that involve a reduction, by one, of the number of flight attendants required for boarding by § 121.391(a), on an airplane that requires more than one flight attendant. The first scenario, previously discussed and addressed in proposed § 121.394(a)(1), is when one required flight attendant steps off the airplane during boarding to perform safety related duties and remains within 30 feet of the boarding door.

The second scenario is when one required flight attendant is not within 30 feet of the boarding door and is addressed in proposed § 121.394(a)(2).

In this case, a qualified flightcrew member, such as a pilot or flight engineer, may substitute in the cabin for one required flight attendant who is not on the airplane when boarding commences or who leaves the vicinity of the aircraft during boarding.

Under proposed § 121.394(a)(2), the flightcrew member who substitutes for the required flight attendant must be trained and qualified on that airplane as a pilot or a flight engineer for that certificate holder. This ensures that the flightcrew member has received emergency and security training that is specific to that airplane and that certificate holder.

If the certificate holder chooses to substitute a flightcrew member for a flight attendant in accordance with proposed § 121.394(a)(2), it must ensure the substitute crewmember is prepared to conduct his or her duties by having in his or her possession all items required for duty by the air carrier, such as a flight operations or flight attendant manual. The substitute crewmember must also be identifiable to the passengers as a working "crewmember."

In addition, the certificate holder must ensure the use of a substitute crewmember does not impinge on the duty and rest requirements of Title 14 Code of Federal Regulations (14 CFR). The FAA has previously stated via legal interpretation that pre- and post-flight duties are part of a duty period (see August 12, 2008, FAA letter to Brent Harper, Southwest Airlines). A copy of this document has been placed in the docket for this rulemaking. Therefore, a substitute crewmember is "on duty" while substituting for an assigned flight attendant.

Additional procedures that would have to be developed by the certificate holder and described in its manual system under proposed § 121.394(a)(2) include:

- The functions to be performed by the substitute crewmember and remaining flight attendants in an emergency or situation requiring emergency evacuation. Similar to the requirements found in § 121.397, the certificate holder must show that these functions are realistic, can be practically accomplished and will meet any reasonably anticipated emergency;

- A method to ensure that the substitution of a flightcrew member for a flight attendant during passenger boarding does not interfere with the safe operation of the flight (e.g. interfering with the completion of the flightcrew member's pre-flight duties, checklists, etc);

- A method to ensure that the flightcrew member is located in the

passenger cabin during the substitution; and

- A method to ensure that other regulatory safety functions performed by a flight attendant, including but not limited to, monitoring passengers during refueling, scanning passenger carry-on baggage during boarding, and verifying suitability of exit seat passengers, are accomplished by the flightcrew member and the remaining flight attendants on the airplane.

- A method to ensure that the substitute flightcrew member is trained in all assigned flight attendant duties.

#### *Limitations Applicable to Passenger Deplaning*

A flight attendant may be asked to conduct other safety-related duties during passenger deplaning, such as maintaining custody of an unaccompanied minor or contacting local law enforcement to assist with an unruly passenger. However, the conditions present during passenger deplaning mitigate safety risks to passengers to allow a further reduction in required flight attendants. The FAA proposes to permit a reduction to half the number of flight attendants required by § 121.391(a), rounded down to the next lower number in the case of a fraction, but never fewer than one.

At the time of deplaning, each passenger has already received all required safety information briefings and had an opportunity to review the passenger safety information card and all posted signs and placards. In addition, a crewmember has verified the suitability of exit seat passengers, and the exit seat passengers have had an opportunity to ask questions about their exit seat responsibilities. These passengers are better prepared to assist themselves in an emergency evacuation than those passengers just boarding an airplane. During deplaning, passengers are in the process of leaving the airplane in an orderly fashion through one or more floor-level exits with pre-positioned passenger loading bridges or boarding stairs. These factors lessen the exposure time to the risk of an emergency or a possible evacuation. Further, exiting passengers, as well as additional airline personnel, are available to assist the remaining flight attendant(s) with an unruly or threatening passenger during deplaning.

#### *Limitations Applicable During Boarding and Deplaning Passengers*

In addition to the specific limitations described above, the FAA proposes requiring a certificate holder to duplicate ground conditions already designed to reduce risks to passengers

when a reduced number of flight attendants is on board an airplane. The FAA required these conditions when risks were considered in reducing the number of required flight attendants during stops where passengers remain on board. The conditions are: The airplane is stationary in a level attitude with at least one floor-level exit open; and all engines are shut down, mitigating the risk of an engine torching or overheating. These conditions must also exist to permit a reduction in the number of required flight attendants during passenger boarding and deplaning, in order to provide the same level of risk mitigation as at a stop where passengers remain on board. If the certificate holder cannot provide these conditions, it may not reduce the flight attendant crew below the requirements of § 121.391(a).

Finally, the FAA proposes the flight attendants remaining on board the airplane be evenly distributed near the floor-level exits. This proposed requirement would assure that the flight attendants are available to deal more effectively with an emergency evacuation, should the need arise. If only one flight attendant remains on board the airplane during passenger boarding, he or she must be located in accordance with the air carrier's FAA-approved operating procedures. The air carrier should consider items such as the location of the door being used for passenger boarding, the configuration of the cabin, the location of the emergency light switch, and the air carrier's emergency procedures when determining the best location for the flight attendant.

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

#### **International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

#### **Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

The FAA has decided to review its current regulations regarding flight attendant requirements during passenger boarding and deplaning, in light of safety enhancements to airplane equipment and procedures, and changes in airplane security procedures and requirements. These changes have mitigated the risks to passengers during ground operations that previously required all flight attendants on board the airplane during passenger boarding and deplaning. This proposed rule merely revises and clarifies existing FAA rules and is cost relieving and does not impose any cost on any regulated entity.

FAA has, therefore, determined that this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of

applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has decided to review its current regulation regarding flight attendant requirements during passenger boarding and deplaning, in light of safety enhancements to airplane equipment and procedures, and changes in airplane security procedures and requirements. These changes have mitigated the risks to passengers during ground operations that previously required all flight attendants to be on board the airplane during passenger boarding and deplaning. This proposed rule is cost relieving and does not impose any cost on any regulated entity.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

#### **International Trade Impact Assessment**

The Trade Agreements Act of 1979 (Pub. L. 96-39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule

and has determined that it would have only a domestic impact and therefore no effect on international trade.

### Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million. This proposed rule does not contain such a mandate.

### Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

### Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) and involves no extraordinary circumstances.

### Additional Information

#### Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

#### Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies/](http://www.faa.gov/regulations_policies/); or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph 1.

#### List of Subjects in 14 CFR Part 121

Aviation safety, Air carriers, Air transportation, Airplanes, Airports, Boarding, Crewmembers, Deplaning, Flight attendants, Pilots, Transportation, Common carriers.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I, Part 121 of Title 14, Code of Federal Regulations, as follows:

### PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 46105.

2. Revise § 121.391(a) introductory text to read as follows:

#### § 121.391 Flight attendants.

(a) Except as specified in § 121.393 and § 121.394, each certificate holder must provide at least the following flight attendants on board each passenger-carrying airplane when passengers are on board:

\* \* \* \* \*

3. Add § 121.394 to read as follows:

#### § 121.394 Flight attendant requirements during passenger boarding and deplaning.

(a) During passenger boarding, on each airplane for which more than one flight attendant is required by § 121.391(a), the certificate holder may reduce the number of required flight attendants by one, provided the requirements of either paragraph (a)(1) or (a)(2) of this section are met.

(1) When the flight attendant leaving the airplane remains within 30 feet of the door through which passengers are boarding:

(i) The flight attendant may only conduct safety duties related to the flight being boarded;

(ii) The airplane engines are shut down; and

(iii) At least one floor level exit remains open to provide for the deplaning of passengers.

(2) When the flight attendant leaving the airplane does not remain within 30 feet of the door through which passengers are boarding, a flightcrew member of the certificate holder, trained and qualified on that type airplane, may substitute for the flight attendant provided:

(i) The certificate holder describes in its manual the necessary functions to be performed by the substitute crewmember and remaining flight attendants in an emergency or situation requiring emergency evacuation. The certificate holder must show those functions are realistic, can be practically accomplished and will meet any reasonably anticipated emergency.

(ii) The certificate holder describes in its manual how other regulatory functions performed by a flight attendant will be accomplished by the substitute crewmember and the remaining flight attendants on the airplane.

(iii) The certificate holder ensures the substitute flightcrew member is trained in all assigned flight attendant duties.

(iv) The certificate holder ensures the substitute crewmember is in possession of all items required for duty.

(v) The certificate holder ensures the substitute crewmember is located in the passenger cabin.

(vi) The certificate holder identifies the substitute crewmember to the passengers.

(vii) The certificate holder ensures the time spent conducting boarding duties applies towards daily duty time limits and is considered when determining crewmember rest requirements.

(viii) The certificate holder does not permit the substitution of a flightcrew member for a flight attendant to interfere with the safe operation of the flight. If all flightcrew members are required to perform preflight duties, passenger boarding must not commence until the flight attendants required by § 121.391(a) are on board the airplane.

(ix) The airplane engines are shut down.

(x) At least one floor-level exit remains open for the deplaning of passengers.

(b) During passenger deplaning, on each airplane for which more than one flight attendant is required by § 121.391(a), the certificate holder may reduce the number of flight attendants required by that paragraph provided:

(1) The airplane engines are shut down;

(2) At least one floor level exit remains open to provide for the deplaning of passengers;

(3) The number of flight attendants on board is at least half the number required by § 121.391(a), rounded down to the next lower number in the case of fractions, but never fewer than one.

(c) If only one flight attendant is on the airplane during passenger boarding or deplaning, that flight attendant must be located in accordance with the certificate holder's FAA-approved operating procedures. If more than one flight attendant is on the airplane during passenger boarding or deplaning, the flight attendants must be evenly distributed throughout the airplane cabin, in the vicinity of the floor-level exits, to provide the most effective assistance in the event of an emergency.

Issued in Washington, DC, on January 14, 2009.

**John M. Allen,**

*Director, Flight Standards Service.*

[FR Doc. E9-1140 Filed 1-16-09; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 38

RIN 3038-AC28

### Conflicts of Interest in Self-Regulation and Self-Regulatory Organizations

**AGENCY:** Commodity Futures Trading Commission ("Commission").

**ACTION:** Proposed rule; withdrawal of previous proposed rule.

**SUMMARY:** On January 31, 2007, the Commission adopted its first acceptable practices for Section 5(d)(15) ("Core Principle 15") of the Commodity Exchange Act ("Act").<sup>1</sup> As with all other acceptable practices, those for Core Principle 15 are a safe harbor that designated contract markets ("DCMs") can use to demonstrate core principle compliance. The acceptable practices contain four provisions—three are "operational provisions" and one provides necessary definitions, including a definition of "public director." All four provisions were published simultaneously in the **Federal Register** on February 14, 2007, and became effective on March 16, 2007.<sup>2</sup> Existing DCMs were given a two-year phase-in period to implement the acceptable practices or otherwise demonstrate full compliance with Core Principle 15.

On March 26, 2007, the Commission published certain proposed amendments to the definition of public director in the acceptable practices.<sup>3</sup> The Commission received six comment letters, but did not act upon the proposed amendments.<sup>4</sup> Subsequently, on November 23, 2007, the Commission published a stay of the entire acceptable practices for Core Principle 15 in the **Federal Register**.<sup>5</sup> The Commission noted that absent a clear and settled definition of public director, the acceptable practices' three operational provisions were difficult to implement. To bring further clarity to this term and move to finalize the underlying acceptable practices, the Commission hereby withdraws the proposed amendments to the definition of public director published on March 26, 2007,

<sup>1</sup> The Act is codified at 7 U.S.C. 1 *et seq.* (2000). The acceptable practices for the DCM core principles reside in Appendix B to Part 38 of the Commission's Regulations, 17 CFR Part 38, App. B. Core Principle 15 states: "CONFLICTS OF INTEREST—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision making process of the contract market and establish a process for resolving such conflicts of interest." CEA section 5(d)(15). 7 U.S.C. 7(d)(15).

<sup>2</sup> 72 FR 6936 (February 14, 2007).

<sup>3</sup> 72 FR 14051 (March 26, 2007). Under the acceptable practices, the definition of "public director" is also relevant to members of DCM regulatory oversight committees (all of whom must be public directors) and to members of DCM disciplinary panels (panelists need not be directors, but panels must include at least one member who meets certain elements of the public director definition).

<sup>4</sup> The comment letters are available on the Commission's Web site, at: <http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2007/07-001.html>.

<sup>5</sup> 72 FR 65658 (November 23, 2007).

and proposes and seeks public comment on updated proposed amendments to the definition of public director, as described below. This proposal does not amend the other provisions contained in the adopted acceptable practices, including the DCM requirement for a regulatory oversight committee ("ROC") consisting of all public directors and a board of directors with at least 35% public directors. The November 23, 2007 stay remains in effect until further notice by the Commission.

**DATES:** Comments on the new proposed amendments should be submitted on or before February 20, 2009.

**ADDRESSES:** Comments should be sent to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments may be submitted via e-mail at [secretary@cftc.gov](mailto:secretary@cftc.gov). "Regulatory Governance" must be in the subject field of responses submitted via e-mail, and clearly indicated on written submissions. Comments may also be submitted at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rachel F. Berdansky, Deputy Director for Market Compliance, 202-418-5429, or Sebastian Pujol Schott, Special Counsel, 202-418-5641, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, Washington, DC 20581.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Procedural History

As noted above, the Commission adopted its first acceptable practices for Core Principle 15 on January 31, 2007. In order to receive the benefit of the safe harbor provided by the acceptable practices, a DCM is required to satisfy all four of the included provisions. The acceptable practices include three operational provisions pertaining to DCM boards of directors, the insulation and oversight of self-regulatory functions, and the composition of disciplinary panels. In particular, the acceptable practices require that a DCM's board be composed of at least 35% public directors. They also require that a DCM's regulatory programs fall under the authority and oversight of a board-level ROC consisting exclusively of public directors. Finally, the acceptable practices require that a DCM's disciplinary panels include at least one public person. These provisions remain unchanged by this proposed rule.